

Before the  
Federal Communications Commission  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

\_\_\_\_\_)  
In the Matter of )  
Petition for Review of the )  
Universal Service Administrator by )  
Seed School )  
Washington, D.C. )  
Federal-State Joint Board on )  
Universal Service )  
Changes to the Board of Directors of the )  
National Exchange Carrier Association, Inc. )

File No.

CC Docket No. 96-45

CC Docket No. 97-21

**SEED SCHOOL PETITION FOR REVIEW**

The SEED Public Charter School of Washington, D.C. (SEED School) petitions the Federal Communications Commission (FCC) for consolidated review of the three attached Commitment Adjustment letters issued on January 31 to it by the Universal Service Administrative Company Schools & Libraries Division (USAC). See Attachment A.<sup>1</sup> One of the school's vendors, Infosys Services, Inc., joins it in the appeal concerning FRN 424629. USAC is seeking to recover \$6,293.53 for Funding Year 1999-2000 and \$426,044.93 for Funding year 2000-2001 from the SEED School on the strength of this finding recited for each affected disbursement:

After thorough investigation, it was determined that this funding request must be rescinded in full. A Beneficiary Audit found that this entity did not follow local bidding requirements. Program rules state that entities must comply with their local bidding requirements. As a result, the commitment amount must be rescinded and disbursed amounts will be recovered.

The Beneficiary Audit findings referred to are these:

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List A B C D E

<sup>1</sup> As we note in section C below, one of the proposed adjustments has a second basis as well

DC Public Charter School Policies and Procedures indicate approval by their review board for all contracts \$10K or greater. SEED School has not adhered to this procedure. . . .

Policies and Procedures also indicate an advertisement requirement within two local papers. SEED School did not advertise in any local paper.

The District of Columbia statutory provisions to which reference is made are these:

**(A)** Notice *requirement for procurement contracts*

- (i) *In general.* – Except in the case of an emergency (as determined by the eligible chartering authority of a public charter school), with respect to any procurement contract proposed to be awarded by the public charter school and having a value equal to or exceeding [\$10,000], the school shall publish a notice of a request for proposals in the District of Columbia Register and newspapers of general circulation not less than 7 days prior to the award of the contract.

**(B)** *Submission to the eligible chartering authority.*

- (i) *Deadline for submission.* – With respect to any contract described in subparagraph (A) of this paragraph that is awarded by a public charter school, the school shall submit to the eligible chartering authority, not later than 3 days after the date on which the award is made, all bids for the contract received by the school, the name of the contractor who is awarded the contract, and the rationale for the award of the contract.
- (ii) *Effective date of contract.* – A contract described in subparagraph (i) of this paragraph shall become effective on the date that is 10 days after the date the school makes the submission under subparagraph (i) of this subparagraph with respect to the contract, or the effective date specified in the contract, whichever is later.

DC Code 2001 §§ 38-1802.04(c)(1)(A) & (B)

It is accurate that the SEED School should have submitted copies of some of<sup>2</sup> its *E-Rate* contracts to the Public Charter School Board (PCSB) within three days of the execution of those agreements. Contrary to the audit finding, PCSB approval of contracts

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<sup>2</sup> The submittal requirement only applied to contracts of \$10,000 or more, eliminating \$20,370.38 of the adjustments contended for by USAC

is not required, only submittal is called for. Those contracts have now been submitted to the PCSB and the PCSB has waived the requirement of timely submittal. The documents submitting the contracts and requesting waiver of certain PCSB procurement requirements and the PCSB grant of the waiver request are appended as Attachment B to this document. Because the PCSB submission requirement is only to inform the PCSB, which does not have the right of contract approval, the tardy submission of those documents caused no legal harm, a fact underscored by the PCSB's willingness to retrospectively waive its submittal requirements.

It is also correct, as the Beneficiary Audit findings observed, that the SEED School should have published contract notification of its intention to seek bid proposals. The PCSB has also retrospectively waived this procurement procedure requirement. The failure to make local publication of the intention to seek bid proposals was a harmless error. The school secured competitive bids without the need for local publication. It accomplished nationwide (indeed, international) publication by the posting of its FCC Form 470 on the USAC website and, through its own efforts and those of interested vendors, accomplished vigorous competition in bidding for the goods and services to be procured and awarded contracts to the low bidder in each instance. Publication in the D.C. register and a newspaper of general circulation could not have accomplished better results than these. The failure of publication is a technical flaw but a harmless one that does not justify the grave injury to the public interest that would result from the commitment adjustment proposed by USAC. We address each of these matters further in what follows.

**A. Prior Approval of Charter School Contracts is not Required by District of Columbia Law And Any Such Requirement Exists, It Has Been Waived.**

The preliminary Beneficiary Audit assertion that District of Columbia charter schools must secure PCSB approval of contracts over a certain dollar amount is contrary to the statutory scheme governing D.C. charter schools. Even were approval required, the requirement has been waived.

As set out above, the statute calling for submission of charter school contracts to the PCSB governs contracts already “awarded by a public charter school...”<sup>3</sup> If Board approval was the contemplation of the statute, it surely would have called for a submission to the Board prior to any contractual commitment. If a charter school were to enter into contracts and subsequently submit them to the Board for approval, rather than simply for informational purposes, schools could find themselves in the untenable position of having enforceable contractual obligations disapproved by the Board. If the Board had the power to disapprove binding contracts, it would equally have the power to force charter schools into the position of being required by Board disapproval to breach their contracts. It can not have been the intention of the District’s legislators to put charter schools in this position.

It is accurate that the SEED School failed to make timely submission of the contracts to PCSB for which USAC is seeking commitment adjustments. The initial failure to file has been cured by a late filing and PCSB waiver of the timely filing requirements. The information is available to the Board in time for the statutorily prescribed five year review of charter school operations. See D.C. Code 2001 § 38-1802.12(a)(3). **As** we establish below, there is **very** substantial public interest in maintaining the operation of the District of Columbia SEED School. The minor (and since cured) failure to submit binding contracts to the Board can not serve as an adequate basis for almost surely inflicting gravely harmful if not fatal financial injury on the school.

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<sup>3</sup> The submission is to be made “not later than 3 days after the date on which the award is made...” This makes it clear, if the language included in the text does not, that the submission to the Board called for in the statute is a post-contract occurrence.

The fact that the PCSB has itself retrospectively waived the obligation of timely submission of contracts by the SEED School confirms the validity of this analysis. If the PCSB is not persuaded that there was any harm in the SEED School's untimely submission, surely the Commission should not be either. The PCSB waiver puts the SEED School in compliance with the local requirements.

**B. The SEED School Received Competitive Bids For The Goods and Services For Which E-Rate Funds Were Spent and in any Event the Requirement of Bid Proposal Publication has been Waived.**

During December 1999 and January 2000, SEED school personnel requested and evaluated bids for the telecommunications infrastructure at the proposed permanent campus of the SEED school at 4300 C Street, SE. SEED was thorough, cost-conscious and fair in its request for bids and evaluation of bids received.

Julie Mikuta, then Director of Curriculum and Technology, was the author of the School's technology plan and leader of the bid process. Susan Cunningham, then Construction Manager for the SEED PCS Campus Development, helped Ms. Mikuta understand the proposed campus buildings and design the technology infrastructure accordingly. Both Ms. Mikuta and Ms. Cunningham reviewed RFP materials, attended meetings with vendors, bids, and determined final selection of vendors.

In December 1999, the SEED Foundation was in negotiations for lease of the property at 4300 C Street (which was executed on February 7, 2000), and had completed conceptual design work with an architect and engineering team. Preliminary floor plans of the planned dormitory and academic building were available on December 7, 1999. From these drawings, SEED determined the type and quantity of connections needed in the new buildings.

Given the income levels of its student body, the SEED school hoped the federal E-Rate program would provide substantial support for the technology infrastructure development. SEED hoped to develop the infrastructure during the campus construction, to avoid much higher costs of retrofitting buildings after completion. Thus, Ms. Mikuta filed E-rate Form 470 (posting services needed and inviting bids) on December 18, 1999. This form outlined the School's need for internal data and telephone connections, data sewers, a telephone switching system, external T-1 data connections, local phone service,

long distance phone service, cellular phone services, and pager services. Very few inquiries were received through the website posting, so SEED contacted a school technology expert to discuss the School's technology plans and to identify additional vendors.

Phone calls and meetings with vendors occurred from December 19 to January 19. A summary table of vendors considered is attached. Vendors were evaluated for:

- Experience and certification to complete this work (especially IP phone installation). Track record and references for on-time, safe, and technically sound operations
- cost
- Organizational capacity, responsiveness and thoroughness.
- Breadth of service – one vendor for multiple services where possible to minimize construction cost overruns and delays.

The E-rate deadline for Form 471 (formal E-rate application for services) was January 19, 2000. After reference checks and final scope descriptions from Panurgy and InfoSys, SEED selected InfoSys as the internal connections installer. InfoSys had the lowest contract price, and a certified team that was highly recommended and extremely responsive and energetic.

Panurgy and InfoSys both recommended Compaq servers. Other schools and technology professionals strongly recommended Dell servers. SEED found the Dell prices more competitive than Compaq, and selected Dell based on value and reliability.

Starpower/Erols, Nextel, Bell Atlantic and CDW were selected for external voice and data connections, cellular phone service, pager service, and miscellaneous equipment. Price and service reputation were the primary drivers of these selections. Each of these services was a month-to-month service or a one-time expense of less than \$10,000 thereby not subject to the local procurement rules. All voice and data connections required some construction work to bring lines into the campus. SEED selected Starpower based on monthly service costs. The associated one-time equipment installation and construction cost was expected to be \$67,000. Additional information on the vendors considered is provided in the attached "Vendors Considered" charts.

In summary, the SEED PCS technology bid process for school year 2000 – 2001 was thorough, cost-conscious, and fair. Though SEED failed to publish notification of its

intent to seek bid proposals in the local press, the School made every reasonable effort to solicit numerous bids within the tight timeframe created by uncertainty about the procurement and design of the campus, and the annual E-Rate application deadline. The resulting infrastructure development was technologically-appropriate and cost-efficient.

The PCSB has waived the local procurement requirement of local advertising, noting that “the SEED Public Charter School followed federal E-Rate grant guidelines for securing contractors.” The PCSB obviously found that the failure to advertise locally was a harmless oversight that did not adversely affect local interests. Here too, the FCC can not find a violation of local procurement regulations and procedures where the local entity in charge of administering and enforcing those requirements has determined, by waiving the requirements, that no violation exists

C. An Adequate Writing Exists to Support the Dell Acquisition Contract.

The Commitment Adjustment Letter concerning services provided by Dell Marketing LP, FRN 424915, has an additional recited basis for the adjustment action proposed:

Additionally, it was determined that the applicant had not established a legally binding agreement with the service provider, which is also violation of the rules of the Schools and Libraries Division support mechanism.

This conclusion is wrong as a matter of law.

The law in the District of Columbia concerning the formal requirements of contract formation is flexible. The District has adopted the Uniform Commercial Code (UCC), which requires little formality. To comply with the UCC’s statute of *frauds*,<sup>4</sup> there must only be “some writing sufficient to indicate that a contract for sale has been

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<sup>4</sup> It is **analytically** wrong to think that any writing is necessary to establish a “legally binding agreement unless by that term one means an agreement that can be enforced through litigation.

made between the parties....” The writing in the instance of Dell is a price quotation from Dell that was accepted by the SEED School for the purchase of the equipment indicated. See Declaration of Susan Cunningham. No more then this is required by the UCC.

Indeed, under UCC § 2-201(1) the statute of frauds has been deemed satisfied, a legally binding obligation established in a variety of circumstances where there is a deficiency to the writings reflecting the transaction. For example, performance under the agreement can serve as a substitute for a writing. See, e.g. Andersen v. Coss, 527 N.E. 2d 1098 (Ill. App. 1988, appeal denied, 535 N.E. 2d 398 (Ill. 1988)). There has been full performance by each of the SEED School and Dell under the purchase agreement between them. Indeed, full performance is not a prerequisite to satisfying the statute of frauds by something other than a writing, partial performance will work as well. See, e.g. Buffalo v. Hart, 441 S.E.2d 172 (N.C. Ct. App. 1994) Acceptance of payment constitutes partial performance sufficient to create an enforceable agreement, First Valley Leasing, Inc. v. Gouskey, 795 F. Supp. 693 (D.N.J. 1992) as will receipt of partial payment where indivisible whole contracts are at issue. W.I. Snyder Corp. v. Caracciolo, 541 A. 2d 775 (Pa. Super. 1988). Acceptance of goods will also constitute partial performance sufficient to satisfy the statute of frauds. R.M. Engineering Products, Inc. v. UOP, Inc., 793 F.Supp 1373 (W.D. La. 1991).

By any of these measures, the SEED School and Dell had a binding agreement fully enforceable by either party under the UCC’s statute of frauds. The suggestion to the contrary in the commitment adjustment letter concerning the Dell procurement in the 2000-2001 funding year is indefensible and can not be permitted to stand as a basis for a



commitment adjustment action. The Commission must reverse this aspect of the commitment adjustment proposed by USAC with respect to FRN 424915.

D. The SEED School is an Invaluable Asset to the City and Students That It Serves, The Economic Viability of Which Would be Seriously Comprised by USAC's Proposed Commitment Adjustments.

When it was founded in 1998, the Seed Public Charter School of Washington, DC was the nation's first urban public boarding school. It provides a residential/educational environment for a period of six years for its entering seventh grade classes.

The fact that the facility is residential permits students to benefit from an integrated curriculum that incorporates academic, extra curricular and life skills. Although the school is residential, it is located in the community that is the primary catchment area for its students, permitting parents and other family members to participate actively in all phases of their children's education.

The school's programs are divided into two phases. The middle school program is designed to bring students who have received a poor education, performed poorly in school or, too frequently, both up to grade standards. The high school program is essentially a college preparatory program that focuses on preparing students that would otherwise have little if any chance to attend, much less to perform well in, undergraduate school.

There are two senses in which the school is a laboratory. It is testing the efficacy of a rigorous residential middle and high school environment on a population of young people who have never had access to learning and living facilities such as those maintained by the school. It is also and urgently focused on the growth and development of individual students. The school has good reason to believe that it is succeeding

admirably in both endeavors and knows that its participation in the FCC's E-rate program has been instrumental to that success.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "N. Frank Wiggins", with a long horizontal flourish extending to the right.

N. Frank Wiggins

DC Bar No. 194076

Venable, Baetjer, Howard & Civiletti, LLP

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Washington, DC 20005-3917

(202) 962-4957

nfwiggins@venable.com

Counsel to SEED Charter School of

Washington, DC and Infosys Services, Inc.

# SEED SCHOOL PLEADING

## ATTACHMENT A

District of Columbia **Public Charter School Board**

March 26, 2003

Josephine Baker  
ChairThomas P. Laughlin  
Vice Chair

Joseph F. Manning

Hope Hill

Beatriz (BB) Otero

J.R. (Bernie) Walker

Nelson Smith  
Executive Director1435 U Street, NW  
Suite 401  
Washington, DC 20009Office 202-328-2660  
Fax 202-328-2661  
www.dcpubschools.comEric Adler  
President of the Board of Trustees  
SEED Public Charter School  
8022 Summer Mill Court  
Bethesda, MD 20815

Dear Mr. Adler:

This letter is in response to your request for an emergency waiver for the installation of telecommunications and information technology hardware and wiring in the SEED Public Charter School. The D.C. Public Charter School Board (PCSB) has granted your request and waived the procurement review requirements. This decision is based on the circumstances described in your letters dated March 14, 2003.

You noted in the letter that the SEED Public Charter School followed federal e-rate grant guidelines for securing contractors. The emergency waiver was granted by PCSB based on the following factors:

- The contract is the same as in previous years with one exception. The contract was formerly between the vendor and The SEED Foundation (instead of SEED PCS).
- The school followed the federal E-Rate guidelines for requesting proposals.
- This contract is integral to the school's programs.

Please note that this waiver was granted based on extenuating circumstances. It is our expectation that you will follow procurement requirements for all future contracts.

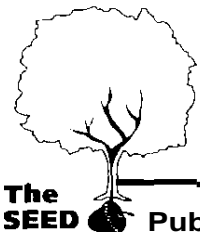
If you have any questions concerning this letter, please contact Kimberly Campbell at (202) 328-2667.

We wish you the best as you move forward with this project.

Sincerely,

Josephine C. Baker  
Executive Director

cc: Rajiv Vinzokota



**The SEED Public Charter School of Washington, D.C.**

March 14, 2003

Kimberly Campbell  
District of Columbia Public Charter School Board  
1436 U Street, NW Suite 401  
Washington, DC 20009  
Fax: 202-328-2651

Dear Ms. Campbell,

This letter is an Emergency Request submittal for The SEED Public Charter School of Washington, DC to advise you of its contracts with InfoSys, to provide Internal Telecommunications Connections for the technology infrastructure at the current SEED School campus. We are submitting these contracts, as required by the DC School Reform Act of 1995, to obtain a waiver on the traditional contracting process. This letter summarizes the bidding process for the SEED Public Charter School Campus Internal Telecommunications Connections.

E-rate is a federal program of the Federal Communications Commission administered by the Schools and Libraries Division of the Universal Service Administrative Company that provides eligible K-12 public schools and libraries 20% to 90% discounts on approved telecommunications, Internet access, and internal connections costs. Given the income levels of its student body, SEED PCS received substantial support for the technology infrastructure development, with the E-rate program providing 90% of the cost of contracts.

To comply with the E-rate program procurement rules, SEED PCS advertised the bid request on the E-rate website from December 19, 1999 to January 19, 2000. In addition, SEED contacted other charter schools and technology experts for advice on vendors to contact. Bids were accepted through January 19, 2000. SEED made every reasonable effort to solicit numerous bids within the tight timeframe created by uncertainty about the procurement and design of the campus, and the annual E-rate application deadline. The resulting infrastructure development was technologically-appropriate and cost-efficient. SEED spoke with eight vendors and received three complete bids, one partial bid and one incomplete bid. Bids were analyzed for:

- Experience and certification to complete this work. Track record and references for on-time, safe, and technically sound operations
- Cost
- Organizational capacity, responsiveness and thoroughness.
- Breadth of service - one vendor for multiple services where possible to minimize construction cost overruns and delays.



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**The SEED Public Charter School of Washington, D.C.**

After considering these bids, we elected to contract with InfoSys to provide the wiring, server installation, project management and maintenance of the internal telecommunications systems on the SEED Public Charter School campus at 4300 C Street SE. We also strongly considered Panurgy, but found their bid was higher. Other vendors were less attractive because they were not able to install the wiring and servers for the selected Cisco IP phone system. A summary of all bids is attached for your review. This work was completed in January 2001, as part of the Phase I campus construction project managed by the SEED Foundation.

The SEED School is also submitting Infosys contracts for the second and third phase of internal telecommunications connections at its permanent campus. For both the second and third phases of construction, The SEED School solicited other bids through the established e-rate process and also published an advertisement in the Washington Times for the third phase. SEED met with and had phone conversation with a number of interested bidders, but no official bids were provided except for the InfoSys bid. SEED has established a positive business relationship with InfoSys, which we believe led to the lack of bids besides the one which we received.

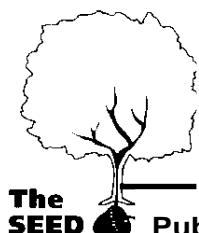
We look forward to the Public Charter School Board's review of these contracts. Please feel free to contact me if you have any questions.

Sincerely,

Rajiv Vinnakota  
Trustee, The SEED Public Charter School

enclosure:

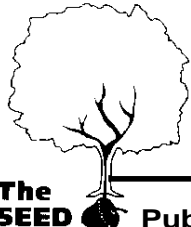
- List of Vendors considered and comments
- Contract between SEED and InfoSys (1/24/00 bid and 10123100contract)
- Contract between SEED and InfoSys (1117101)
- Contract between SEED and InfoSys (1/15/02)
- Board Chair Certification
- Board Treasurer Certification



## SEED PCS Telecommunications Vendors Considered (SY 2000-2001)

Data Network -- **Internal connections (wiring, data drops, server configuration, integration and software)**

Vendor	Meeting/ Call	Bid Received	Bid Price	Comments
<b>InfoSys</b>	1/18/00	1/19/00 <i>'revised</i> 1/24/00 <i>with new</i> <i>Cisco</i> <i>price list)</i>	<i>Internal connections</i> <i>(cabling, switches,</i> <i>routers, phones)</i> <i>\$607,699.90 one-time</i> <i>\$2000 monthly</i>  <i>LAN integration</i> <i>\$127,300.00 one-time</i> <i>\$6,800 monthly</i>	<b>Selected Vendor. Cisco certified for IP phone installation. Best price. Good references. Full service. Very energetic and responsive.</b>  <i>Final contract executed 8/23/00 (reflecting Cisco price decreases before work started):</i> <i>Internal connections</i> <i>\$515,132.00 one-time</i> <i>\$2000 monthly</i>  <i>LAN integration</i> <i>\$121,504.00 one-time</i> <i>\$6,800 monthly</i>
<b>Panurgy</b>	1/18/00	1/19/00 <i>'revised</i> 1/25/00 <i>with new</i> <i>Cisco</i> <i>price list)</i>	Internal connections (cabling switches, routers, phones) \$679,495.90 one-time \$4339.17 monthly  LAN integration \$129,706.00 one-time \$4,229.17 monthly	Cisco certified for IP phone installation. Higher pricing. Average references Full service.
<b>Texel</b>	1/13/00	1/18/00	<i>Bid information not available. Bid was received. Notes of questions and discussion of bid are in file. Company has been sold.</i>	Not yet Cisco certified for IP phone installation. Good pricing and excellent references. Strongly considered, but not full service.
<b>Williams/ Nortel</b>	1/12/00	1/18/00 <i>(incomplete)</i>	<i>Bid was incomplete, unclear and not comparable to other.</i>  <i>Data system: 111,871.00</i> <i>Phone system</i> <i>\$214,098.38</i>	Incomplete bid. Excluded cabling. System design unclear and does not meet specifications. Team less responsive than others. Traditional PBX phone system only.
<b>Arbros Communications</b>	1/10/00	1/18/00 <i>(none bid)</i>	<i>Bid information not available. Some notes of</i>	Cannot do phone installation. Not as responsive as other vendors.



			<i>conversation. Company phone number disconnected.</i>	
<b>Network Technology Group</b>	1/14/00	n/a		Sent RFP and had meeting, elected not to bid because of time constraints.
<b>3 Com – Allied Communications</b>	1/18/00	n/a		Sent RFP and had meeting, elected not to bid because of time constraints
<b>Custom Fit</b>	12/19/99	n/a		Sent RFP and had phone call, elected not to bid (project too large)





**The SEED Public Charter School of Washington. D.C.**

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March 14, 2003

Kimberly Campbell  
District of Columbia Public Charter School Board  
1436 U Street, NW Suite 401  
Washington, DC 20009  
Fax: 202-328-2601

Dear Ms. Campbell,

This letter is an Emergency Request submittal for The SEED Public Charter School of Washington, DC to advise you of its contract with Starpower, to install a multiplexer to provide data and voice service for the current SEED School campus. We are submitting this contract, as required by the DC School Reform Act of 1995, to obtain a waiver on the traditional contracting process. This letter summarizes the bidding process for the SEED Public Charter School Campus Phase I Internet Access, Local Phone and Long Distance Phone Connections. Estimated one-time cost is \$67,000.

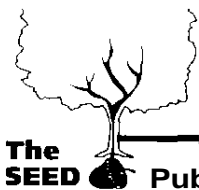
E-rate is a federal program of the Federal Communications Commission administered by the Schools and Libraries Division of the Universal Service Administrative Company that provides eligible K-12 public schools and libraries 20% to 90% discounts on approved telecommunications, Internet access, and internal connections costs. Given the income levels of its student body, SEED PCS received substantial support for the technology infrastructure development, with the E-rate program providing 90% of the cost of contracts.

To comply with the E-rate program procurement rules, SEED PCS advertised the bid request on the E-rate website from December 19, 1999 to January 19, 2000. In addition, SEED contacted other charter schools and technology experts for advice on vendors to contact.

Bids were accepted through January 19, 2000. SEED made every reasonable effort to solicit numerous bids within the tight timeframe created by uncertainty about the procurement and design of the campus, and the annual E-rate application deadline. The resulting infrastructure development was technologically-appropriate and cost-efficient. SEED spoke with seven vendors and received four bids. Bids were analyzed for:

- Experience and certification to complete this work. Track record and references for on-time, safe, and technically sound operations
- Cost
- Organizational capacity, responsiveness and thoroughness.

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**The SEED Public Charter School of Washington, D.C.**

- Breadth of service - one vendor for multiple services where possible to minimize construction cost overruns and delays.

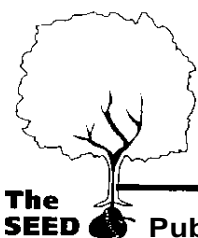
After considering these bids, we elected to contract with Starpower/Erols to provide the internet access, local phone service, and long distance phone service for the SEED Public Charter School campus at 4300 C Street SE. We also strongly considered UUNet, but found they could not provide phone service. Bell Atlantic/Verizon was more expensive and seemed to have a less favorable customer service record. Each of these services was a month-to-month service or a one-time expense of less than \$10,000. All voice and data connections required some construction work to bring service onto the campus. SEED selected Starpower based on monthly service costs. The associated one-time equipment installation and construction cost was expected to be \$67,000. Additional information on the vendors considered is provided in the attached "Vendors Considered" charts. This work was completed in December 2000, as part of the Phase I campus construction project managed by the SEED Foundation.

We look forward to the Public Charter School Board's review of this contract. Please feel free to contact me if you have any questions.

Sincerely,

Rajiv Vinnakota  
Trustee  
The SEED Public Charter School

enclosure:     - List of Vendors considered and comments  
                  - Contract between SEED and Starpower for multifactor installation  
                  - Board Chair Certification  
                  - Board Treasurer Certification



## SEED PCS Telecommunications Vendors Considered (SY 2000-2001)

### Phone and Data services (External connections)

Vendor	Meeting/ Call	Bid Received	Bid Price	Comments
<i>Starpower/ Erols</i>	<i>1/11/00</i>	<i>1/18/00</i>	<i>\$67,000 construction cost</i>	<i>Selected Vendor. Best pricing. Moderate cost for multi-factor (splitter) installation. Full service – data, voice, cable.</i>
Verizon/Bell Atlantic	1/14/00	1/18/00	n/a – construction estimate not submitted since vendor was not selected	Higher cost. Very poor customer service. Substantial construction costs to run new service.
UUNet	1/13/00	1/18/00	n/a - construction estimate not submitted since vendor was not selected	Low cost. Data services only (requires additional vendors to get voice service – smaller contract and less leverage), substantial construction costs to bring in lines



**The SEED Public Charter School of Washington, D.C.**

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March 17, 2003

Kimberly Campbell  
District of Columbia Public Charter School Board  
1436 U Street, NW, Suite 401  
Washington, DC 20009  
Fax: 202-328-2661

Dear Ms. Campbell,

This letter is an Emergency Request submittal for The SEED Public Charter School of Washington, DC to advise you of its contracts with Dell, to provide data servers for the technology infrastructure at the current SEED School campus. We are submitting these contracts, as required by the DC School Reform Act of 1995, to obtain a waiver on the traditional contracting process. This letter summarizes the bidding process for the SEED Public Charter School Campus Data Servers and Accessories.

E-rate is a federal program of the Federal Communications Commission administered by the Schools and Libraries Division of the Universal Service Administrative Company that provides eligible K-12 public schools and libraries 20% to 90% discounts on approved telecommunications, Internet access, and internal connections costs. Given the income levels of its student body, SEED PCS received substantial support for the technology infrastructure development, with the E-rate program providing 90% of the cost of these contracts.

To comply with the E-rate program procurement rules, SEED PCS advertised the bid request on the E-rate website from December 19, 1999 to January 19, 2000. In addition, SEED contacted other charter schools and technology experts for advice on vendors to contact. Bids were accepted through January 19, 2000. SEED made every reasonable effort to solicit numerous bids within the tight timeframe created by uncertainty about the procurement and design of the campus, and the annual E-rate application deadline. The resulting infrastructure development was technologically-appropriate and cost-efficient. SEED received bids from the two industry leaders, Compaq and Dell. Bids were analyzed for:

- Experience and reputation for reliability
- cost
- Organizational capacity, responsiveness and thoroughness.

After considering these bids, we elected to contract with Dell to provide the data servers for the technology infrastructure of the SEED Public Charter School campus at 4300 C Street SE. We

*C:\TEMP\2003\_03 DCPCSB data servers for 2000-01 v2.doc.doc*

also strongly considered Compaq, but found their costs were higher. A summary of bids is attached for your review. This equipment was installed in December 2000, as part of the Phase I campus construction project managed by the SEED Foundation.

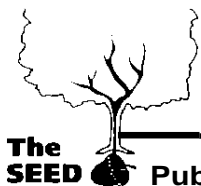
The SEED School is also submitting Dell contracts for the second phase of data servers for the technology infrastructure at the current SEED School campus. For the second phase of construction, The SEED School solicited other bids through the established e-rate process. SEED met with and had phone conversations with a number of interested bidders, but no official bids were provided except for the Dell bid. SEED has established a positive business relationship with Dell, which we believe led to the lack of bids besides the one which we received.

We look forward to the Public Charter School Board's review of this contract. Please feel free to contact me if you have any questions.

Sincerely,

Rajiv Vinnakota  
Trustee  
The SEED Public Charter School of Washington, DC

enclosure:     - List of Data Server Vendors considered and comments  
                  - Dell Price Quote  
                  - Board Chair Certification  
                  - Board Treasurer Certification



## SEED PCS Telecommunications Vendors Considered (SY 2000-2001)

### Data Servers (equipment only)

Vendor	Meeting / Call	Bid Received	Bid Price	Contract Amount	Comments
<i>Dell</i>	<i>1/14/00</i>	<i>1/19/00</i>	<i>\$83,719.20 (7 data servers) \$25,195.20 (racks, accessories) \$15,973.20 (phone server)</i>	<i>\$78,805.00 (7 servers) \$24,774.00 (racks)</i>	<i>Selected Vendor. Best price (educational pricing –purchase directly). Strongly recommended (more reliable) by other schools and technology advisers. Very responsive.</i>
<b>Compaq [sold by Panurgy )</b>	1/18/00	1/19/00	\$ 76,571.00 (4 data servers)	n/a	Preferred by InfoSys and Panurgy. Sold through resellers (e.g. Panurgy). Slightly higher pricing (per server). Less favorable references (re. reliability)

## Attachment C

### INDEX OF TESTIMONIES: DOCKET NO. MC2003-1

WITNESS	TESTIMONY	EXHIBIT		WORKPAPERS	ATTORNEY
		TITLE	NO.		
Mr. Ashe	USPS-T-1	Basic Physical Characteristics of Mail Categories	A	[None]	Anthony Alverno 202-268-2997
		Facsimile Examples of Possible CMM Mailpieces	B		
Ms. Hope	USPS-T-2	[None]		[None]	Anthony Alverno 202-268-2997

# SEED SCHOOL PLEADING

## ATTACHMENT B



## SEED PCS Telecommunications Vendors Considered (SY 2000-2001)

### Data Network – Internal connections (wiring, data drops, server configuration)

Vendor	Meeting / Call	Bid Received	Comments
<i>InfoSys</i>	<i>1/18/00</i>	<i>1/19/00</i>	<i>Selected Vendor. Cisco certified for IP phone installation. Best price. Good references. Full service. Very energetic and responsive.</i>
<b>Panurgy</b>	1/18/00	1/19/00	Cisco certified for IP phone installation. Higher pricing. Average references. Full service.
<b>Texel</b>	1/13/00	1/18/00	Not yet Cisco certified for IP phone installation. Good pricing and excellent references. Strongly considered, but not full service.
<b>Williams/Nortel</b>	1/12/00	1/18/00 (incomplete)	Incomplete bid. Excluded cabling. System design unclear and does not meet specifications. Team less responsive than others. Traditional PBX phone system only.
<b>Arhros Communications</b>	1/10/00	1/18/00 phone bid	Incomplete bid. Cannot do phone installation. Not as responsive as other vendors.
<b>Network Technology Group</b>	1/14/00	n/a	Sent RFP and had meeting, elected not to bid because of time constraints.
<b>3Com – Allied Communications</b>	1/18/00	n/a	Sent RFP and had meeting, elected not to bid because of time constraints.
<b>Custom Fit</b>	12/19/99	n/a	Sent RFP and had phone call, elected not to bid (project too large)

### Data Servers (equipment only)

Vendor	Meeting / Call	Bid Received	Comments
<i>Dell</i>	<i>1/14/00</i>	<i>1/19/00</i>	<i>Selected Vendor. Best price (educational pricing – purchase directly). Strongly recommended (more reliable) by other schools and technology advisers. Very responsive.</i>
<b>Compaq (Panurgy)</b>	1/18/00	1/19/00	Preferred by InfoSys and Panurgy. Sold through resellers. Slightly higher pricing. Less favorable references (re. reliability)

## SEED PCS Telecommunications Vendors Considered (SY 2000-2001) –

### Phone System (PBX or IP phone server setup, wiring, phone installation)

Vendor	Meeting / Call	Bid Received	Comments
<b>InfoSys</b> (Cisco Phones)	1/18/00	1/19/00	<i>Cisco Phones: Non-proprietary system = additional savings in future. Lower upfront and lifetime costs. Cisco will be directly involved, responsive.</i>  <i>Selected Vendor. Cisco certified for IP phone installation. Best price. Good references. Full service. Very energetic and responsive.</i>
<b>Panurgy</b> (Cisco Phones)	1/18/00	1/19/00	Cisco Phones: see comments above.  Vendor: Cisco certified for IP phone installation. Higher pricing. Average references. Full service.
<b>Williams/Nortel</b>	1/12/00	1/18/00	Traditional PBX system. High lifetime costs. Proprietary system = lock-in. Proven technology = <b>low risk</b> . Additional cabling costs. Less responsive vendor team.
<b>Bell Atlantic</b>	1/14/00	n/a	Full bid not received. Estimate calculated from phone conversation was much higher one-time and lifetime cost than other options.
<b>E-Tel</b>	1/13/00	n/a	PBX systems. Does not participate in E-Rate

### Cellular Phones (Month-to-month service)

Vendor	Meeting / Call	Bid Received	Comments
<b>Nextel</b>	1/13/00	1/18/00	<i>Selected Vendor. Good Pricing (GSA rate). Best functionality for school use. Will likely require antenna lease for new site, but still cheaper than other options.</i>
<b>AT&amp;T</b>	1/13/00	1/13/00	Higher pricing. Best reception at permanent campus (may use in future).
<b>MCI</b>	None – poor reception	n/a	Very poor reception at school campus
<b>Bell Atlantic</b>	None – poor reception	n/a	Very poor reception at school campus

## SEED PCS Telecommunications Vendors Considered (SY 2000-2001) –

### Papers (Month-to-month service)

Vendor	Meeting / Call	Bid Received	Comments
<i>Bell Atlantic</i>	<i>1/13/00</i>	<i>1/18/00</i>	<i>Selected Vendor. Best pricing. Current Vendor</i>
<i>SkyTel</i>	<i>1/13/00</i>	<i>1/14/00</i>	<i>Higher cost.</i>

### Miscellaneous (Month-to-month service)

Vendor	Meeting / Call	Bid Received	Comments
<i>CDW</i>	<i>1/13/00</i>	<i>1/14/00</i>	<i>Selected Vendor. Good Pricing per price comparisons done in 1999. Small cost item, further pricing not warranted.</i>

### Phone and Data services (External connections) (Month-to-month service)

Vendor	Meeting / Call	Bid Received	Comments
<i>Starpower/Erols</i>	<i>1/11/00</i>	<i>1/18/00</i>	<i>Selected Vendor. Best pricing. Moderate cost for multi-factor (splitter) installation. Full service – data, voice, cable.</i>
<b>Verizon/Bell Atlantic</b>	1/14/00	1/18/00	Higher cost. Very poor customer service. Substantial construction costs to run new service.
<b>UUNet</b>	1/13/00	1/18/00	Low cost. Data services only, substantial construction costs to bring in lines.

*Note: All external connections required some construction cost for router or multiplexer, and/or cabling cost. Vendor selected primarily on monthly service cost and reliability*

## **CERTIFICATE OF SERVICE**

I certify that I have served the SEED School petition for review via U.S. Mail on the following on:

Universal Service Administrative Company  
2120 L Skeet, N.W.  
Suite 600  
Washington, DC 20037

USAC  
Schools and Libraries Division  
P.O. Box 7026  
Lawrence, KS 66044-7026

April 1, 2003

  
N. Frank Wiggins

**Before the  
Federal Communications Commission  
Washington, DC 20554**

**RECEIVED**

APR - 1 2003

_____) ) In the Matter of ) ) Petition for Review of the ) ) Universal Service Administrator by ) ) Seed School ) ) Washington, D.C. ) ) Federal-State Joint Board on ) ) Universal Service ) ) Changes to the Board of Directors of the ) ) National Exchange Carrier Association, Inc. ) )	FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY  File No.  CC Docket No. 96-45  CC Docket No. 97-21
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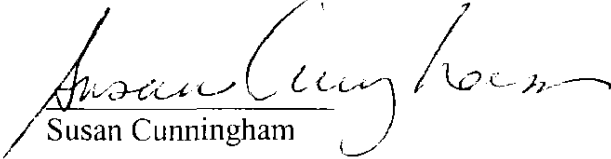
**DECLARATION OF SUSAN CUNNINGHAM**

SUSAN CUNNINGHAM DECLARES AND SAYS:

1. I am the Director of Special Projects of the SEED Public Charter School of Washington, D.C.
2. I was involved in the funding year 2000-2001 E-Rate application filed for The SEED School.
3. I have also reviewed the books and records of the school kept in the ordinary course of business concerning that application.
4. I have determined that on January 19, 2000 the school received a bid for the provision of data servers for its new data network from Dell.
5. That bid offered the lowest prices and most reliable equipment to meet the school's requirements.
6. I have personal knowledge that the bid was accepted the same day, January 19, 2000.
7. Dell subsequently provided the material offered in its bid.

8. I prepared the chart displaying "Telecommunications Vendors Considered" that is Attachment **A** to a pleading to be filed at the FCC for the SEED School. It is accurate to the best of my knowledge and belief as is the history recited in section **B** of the SEED pleading.

I declare under penalty of perjury that the foregoing is true and correct

  
Susan Cunningham

Dated: March 31, 2003